IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8575 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESH M RAO, ASSOCIATED LABOUR CORPORATION - Petitioner(s)

Versus

SAKHARAM OMKAR - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

MR CB DASTOOR for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 30th November, 1999 passed by the Labour Court in Reference [L.C.A.] No. 581/94, whereby the Labour Court has directed the petitioner Corporation to pay back wages for the period from 30th October, 1993 to

31st March, 1996.

2. The short facts of the case are that the respondent was doing the work of loading and unloading work through the petitioner Corporation. It is the case of the respondent that he was working as such since last 13 years. The petitioner without following the procedure under the Industrial Disputes Act, 1947 terminated the services of the respondent. Being aggrieved by the said action, the respondent raised an industrial dispute before the Labour Court, for adjudication. The Labour Court after considering the case on merits, passed the impugned award.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. From the impugned award it appears that pending the Reference the respondent was reinstated in service. However, the Labour Court while granting back wages has not given any cogent reasons. However, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., p.176, a workman has no automatic entitlement to back wages. Since, it is discretionary and has to be dealt with in

accordance with the facts and circumstances of each case.

3.1. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C. P. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award is required to be quashed and set aside.

4. In the result, the petition is allowed. The award dated 30th November, 1999 passed by the Labour Court in Reference [L.C.A.] No. 581/94, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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